

**BOARD OF FORESTRY AND FIRE PROTECTION
PROFESSIONAL FORESTERS REGISTRATION**

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**PROFESSIONAL FORESTERS EXAMINING COMMITTEE****OPEN SESSION MEETING MINUTES**

Meeting held October 25, 2006
1416 9th Street, Room 1506-12
Sacramento, California

Members Participating: Doug Ferrier, Chairman
Otto van Emmerik
Michael Stroud
Tom Osipowich
Ray Flynn

Members Absent: Kim Rodrigues
Jerry Jensen

Staff Participating: Eric Huff, Executive Officer
Terra Perkins, Office Technician

Public Participating: Roy Richards, Jr., RPF No. 280
John Hofmann, RCRC
Chris Quirnbach, CLFA
Allan Lind, Jr., AEP
Chris Browder, CDF
Ed Stirtz, Sierra Nevada Arborists
R. John Little, Sycamore Environmental Consulting

Chairman Ferrier called the Open Session to order and directed that the Committee immediately skip to Item 6 of the Agenda.

**ITEM 6. UPDATE ON COMPLETION OF ACTIONS RELATED TO PLAN FILING
STANDARDS REPORT RECOMMENDATIONS**

Chris Browder, CDF, updated the Committee on the status of Department actions relative to the PFEC's recommendations. Mr. Browder explained that the Department was still working on website postings and collecting Plan return letters. Browder solicited the PFEC's preference for receipt of the return letters once or twice annually. The PFEC by consent indicated that once annually was sufficient.

Chairman Ferrier asked about the status of the proposed mass mailing and Mr. Browder responded that the mailing was still under review by his supervisors. Ferrier asked if a letter from the licensing officer would help to expedite review and approval of the proposed mass mailing. Browder responded that he would prefer to answer that question at the December PFEC meeting, as it may be that the mailing goes out between now and then.

Chairman Ferrier asked Mr. Browder for a status report on the drafting of a new THP form. Browder responded that he and fellow CDF Forester, Shane Cunningham had worked up draft versions of THP Sections I and II. Browder indicated that these draft revised versions were under review by Deputy Director, Bill Snyder. Once Snyder's review is complete, Browder will seek review by agency Review Team personnel and other interested parties such as CLFA.

Chairman Ferrier inquired of EO Huff as to the status of the long anticipated next edition of *Licensing News*. EO Huff responded that he had prepared a working draft of the *News* for review by the Members and the general public (copies provided at the meeting). Huff offered that if the Department wanted to add anything to the *Licensing News* to let him know as Huff's intent is to publish and post by the Thanksgiving holiday.

ITEM 1. APPROVAL OF OPEN SESSION MINUTES OF AUGUST 24, 2006 MEETING

10-06-01 Member Flynn moved approval of the open session minutes and Member Stroud seconded the motion. Motion approved 4-0 with one abstention (Member van Emmerik).

ITEM 2. REVIEW OF DRAFT POLICY STATEMENT ON THE PRACTICE OF FORESTRY AND OTHER PROFESSIONS

EO Huff summarized his report on the draft policy statement at the September 2006 Board meeting in Redding and informed the PFEC as to the Board's meeting schedule through January. Huff indicated that the Board would not likely consider adoption of the draft statement until the January 2007 meeting due to more pressing rule related deliberations.

EO Huff then summarized the Board's comments on the draft statement. Generally, the comments were focused upon improving clarity of the document with regard to the relationship between the Foresters Law and CEQA; and differentiating between what is and what is not the practice of forestry by including examples of both.

Member Flynn asked if the Board members had suggested any language. Huff responded that no language changes had been suggested.

Chairman Ferrier commented that an earlier version of the statement actually included language from the CEQA Guidelines on the involvement of licensed professionals.

Mr. Little reminded the group that the purpose of this statement was to provide clarity to local governments. Little added that he did not oppose including CEQA citations in the document.

Mr. Richards, Jr. questioned whether or not there were existing court decisions regarding the application of licensing laws to CEQA. Richards, Jr. acknowledged that there weren't any related to the practice of forestry, but wondered if there might be case law related to other licensed professions such as surveying or engineering. Richards, Jr. asked if the PFEC shouldn't consider asking CDF or Board Counsel to look into case law on this subject.

Mr. Little expressed the opinion that CEQA does not trump licensing laws, but rather that licensed professionals need not be employed in the drafting of Environmental Impact Reports.

The PFEC directed EO Huff to seek CDF and Board Counsel's review of case law on the subject of CEQA and licensing laws.

Mr. Hofmann asked if maybe we ought to go back and look at what we're trying to define and in what context—are we helping to clarify what SB 1334 added to CEQA with regard to oak woodlands. Based upon a review of the comment letter received by Mr. Kobayashi, it does not seem as though we've answered the question as to when an RPF is necessary.

Chairman Ferrier asked EO Huff for further clarification on the Board's comments. Ferrier went on to state that CEQA case law citations could be a helpful addition to the statement if they exist. Ferrier also supported adding affirmative language explaining what sorts of tasks are considered the lawful practice of forestry. He noted that the comment letter from Mr. Kobayashi provided three good examples of the practice of forestry that could be added to the draft statement as written. Ferrier then solicited the attendees as to whether or not they would support the inclusion of Mr. Kobayashi's examples.

Mr. Hofmann stated that he did not think that oak woodland assessments necessarily always require an RPF as Mr. Kobayashi believes.

Member Flynn questioned whether or not we could create an all inclusive list of things that constitute the practice of forestry. Chairman Ferrier responded that it would not be possible to create such an all inclusive list, but that a list of generalized activities could be constructed and may be helpful.

Mr. Hofmann stated that looking at Mr. Kobayashi's statements one would get the impression that an RPF is always necessary for assessment of oak woodlands. Mr. Hofmann stated that he did not think an RPF was always necessary for such assessments.

Mr. Richards, Jr. explained his involvement in a large development project in Tehama County and discussed his role in the project versus that of the many other resource professionals. The biggest single problem that the developer had was defining where the oak woodland existed on the property in relation to CEQA's new definition of oak woodlands pursuant to SB 1334. Richards, Jr. was able to answer this question for the client and also conducted an inventory of the woodlands. This was how he fit into the project. Richards, Jr. went on to emphasize that his expertise was useful to the project, but was by no means the only expertise that was necessary. Richards, Jr. indicated that he was beginning work on another development project with a similar setting.

Mr. Hofmann questioned whether or not an RPF is always necessary for oak woodland assessments. Specifically, are forestry principles and techniques always required to complete an assessment of oak woodlands? If forestry principles and techniques are always required then he has no problem saying that an RPF must be involved. But, Mr. Hofmann is not certain that forestry principles and techniques would be utilized on every occasion to complete an assessment.

Chairman Ferrier responded that what we are attempting to do is provide guidance without absolutes recognizing that a lead agency will ultimately decide what professional disciplines are necessary for a project. This draft policy statement will not be able to clarify all of the grey area between the Foresters Law and CEQA.

Member Stroud noted that the comments received from Messrs. Nickels and Kobayashi raised valid concerns and their suggestions ought to be incorporated into our draft statement. As Roy Richards, Jr. illustrated in the explanation of his involvement in the development project, there are situations in which the professional skills of an RPF may be necessary and useful to a project. Stroud continued by pointing out that Mr. Nickels was correct to question the draft statement's use of the term "simple" as in "simple inventory." Chairman Ferrier agreed and supported striking that word from the draft. Member Stroud then explained that an RPF may not be useful to a project if the proponent is choosing to complete a 100% inventory of the project area—the resource is what the 100% complete inventory says that it is. But, if the inventory is to utilize a sampling approach that requires an interpretation of the results, an RPF may be the best qualified to complete this work.

Mr. Little reminded the participants that discussion of a draft policy statement started because of the 'Lake County letter' and an enforcement letter posted by EO Huff. Following the posting of these letters, PFEC meeting participants debated the intent of the Foresters Law and its relationship with CEQA before ultimately choosing to set aside legal arguments in favor of a policy that defines when an RPF is necessary or not. Mr. Kobayashi's comments suggesting that only an RPF may perform oak woodland assessments reverts back to ground already covered in meetings previous to this one. To say that arborists like the three here today are not qualified to do woodland assessments is not correct, as arborists have been performing this task for decades.

Chairman Ferrier asked Mr. Little if it is his perspective that assessments of the potential for impacts to oak woodlands, more than just individual or small groups of trees, but up to 20 acres for example does not need to be performed by an RPF. Mr. Little indicated 'yes' that this is his belief.

Mr. Quirnbach responded that he believes the Professional Foresters Law (PFL) is in opposition to Mr. Little's statement and that it is not a matter of who is qualified to do oak woodland assessment, but rather who is licensed by the state to do so. A double standard is created when an RPF is held accountable by law for his/her actions, but non-licensed individuals are allowed to complete the same work without this same accountability.

Mr. Little responded that the PFL does not require licensure for those working on non-forestry commercial, urban or farming uses as indicated in PRC §754.

Mr. Quirnbach responded that the PFL does not contain a definition for 'commercial activities'.

Mr. Hofmann stated that the definition of 'forested landscape' (PRC §754) does indicate where the PFL applies.

Mr. Quirnbach indicated that it is up to the PFEC to decide what a forested landscape is and Mr. Hofmann responded that it is a matter of law. Quirnbach responded that it is up to the PFEC to interpret the law. Hofmann stated that the definition in the law cannot be disregarded.

Mr. Quirnbach stated that he did not think the assembly could get over the fundamental difference of opinion today and that it may not serve this process to generate a bulleted list of activities that constitute the practice of forestry.

Chairman Ferrier question Mr. Quirnbach as to how one could give guidance to others without providing some examples of forestry and non-forestry activities. In order for this policy statement to be effective, we have to offer some clear guidance. Ferrier went on to state that to his mind the threshold between arboriculture and forestry is a matter of whether or not one is dealing with a 'forest' or individual and/or small groups of trees. We have identified oak woodlands as a type of forest. So, oak woodland conservation plans do not solely require the involvement of an RPF—there are many disciplines that can be involved as Roy Richards, Jr. has explained. But, an RPF ought to be involved in addition to those other disciplines that may also be involved. Ferrier concluded by stating he supports inclusion in the draft statement of the three items (*Oak Woodland Assessment, Preparation of Oak Woodland Conservation Plans, Providing Stand Information based on Sample Surveys*) identified in the Kobayashi letter as in general the practice of forestry.

Member Flynn emphasized that the modifier, 'in general' should be used if these items are to be listed in the draft statement and Chairman Ferrier concurred.

Mr. Hofmann suggested that we revise the draft statement by restating portions of the PFL in the introduction in order to set the context for further refinement of the specific issues raised in the meeting today. Mr. Hofmann stated that this ought to be the first section of the document.

Member Osipowich observed that Mr. Hofmann's suggestion combines the language of PRC §752, §753, and §754. Chairman Ferrier noted that we had taken a similar tack in a previous effort, but acknowledged it may be worthwhile to try this approach once again in a new draft.

Member Osipowich noted that we aren't likely to satisfy everyone with this policy statement and that there is no way for this document to be all encompassing. Osipowich reminded the assembly that the only way a more definitive understanding of the law in this matter will be reached is through judicial interpretation.

Chairman Ferrier responded that everyone already has the PFL in front of them and yet there remains a lack of understanding. Member Osipowich acknowledged this, but noted that not everyone has a copy of the Forest Practice Rulebook (which includes the PFL). Osipowich observed that a lot of RPFs are well familiar with the Rulebook, but that it would be completely foreign to the folks we are trying to reach with this statement.

Mr. Hofmann then directed the assembly's attention to the question of oak woodlands assessment as provided by SB 1334. Hofmann noted that he lobbied that bill and knows a bit about the original intent. But, it is not clear in his mind that the oak woodlands assessment required by SB 1334 would not require professional forestry services. If the assessment requires forestry practices, then he is not sure that you wouldn't have to have an RPF perform this work. He added that this was not the original intent of the bill, but that he is not certain that this isn't what the law requires. Mr. Hofmann stated that we ought to look closer at that issue and clarify whether or not an RPF is necessary in this context and make that part of the statement.

Chairman Ferrier asked if we aren't trying to do more with this statement than deal with the oak woodlands assessment question created by SB 1334. We are also trying to improve upon the general understanding of the foresters licensing law and its application.

Member Osipowich concurred with the Chairman, but noted that the document is going to have to be general in nature and that we aren't going to satisfy everyone. We have to provide as much clarity as we can in the interpretation of the PFL and recognize that it may be up to a court of law to take that interpretation to the next level of definition.

Mr. Richards, Jr. posed a question with regard to the difference between current use and proposed use: if a property is zoned residential, but the development never occurred then what how are we going to define current use. He followed this with a question about whether or not grazing of oak woodlands was a forestry use or not. Mr. Stirtz responded that this was a farming use. Mr. Richards, Jr. responded that the Board does include a range/livestock member and that the Board does have some responsibility for rangelands. Rangelands are well integrated into the profession of forestry and noted that many ranchers use cattle leases in conjunction with timber management. He advised that there is a difference between current and proposed uses and that the revised policy statement must continue to reflect this. He then asked if we needed to explicitly include CRMs where grazing is occurring on oak woodlands.

Mr. Stirtz responded that grazing is a farming use that is excluded from the PFL. Member Stroud countered that the grazing of oak woodlands is not a conversion to a farming use.

Discussion continued with Chairman Ferrier providing further explanation of the definition of *forested landscape* and noting that agriculture also includes the growing of trees.

Member Stroud commented on Mr. Richards, Jr.'s observation regarding zoning and devoted use. Stroud noted that there are so many zoning laws that have been on the books for years that might predate other laws. But, this does not mean that zoning laws are then exempt from compliance with all of the legislation that has been passed since.

Member Flynn observed that zoning alone does not alter the physical landscape. A property may be zoned residential, but could remain forested until the residences have been constructed. Chairman Ferrier added that the situation has only become more confusing with large subdivision developments being required to dedicate open space.

Chairman Ferrier pointed to Santa Cruz County's prohibition on timber harvest in certain zoning designations and the quandary this creates. The land is still forested, but zoning prevents commercial timber harvest. This cannot mean that an RPF is therefore not required for the management of such forests. Member Flynn noted that in Humboldt County there are many forested parcels zoned for uses other than Timber Production (TPZ) because they are close to the urban centers.

Chairman Ferrier asked the assembly if it was preferable to move forward using both John Hofmann's suggested revision to the statement and the current version of the statement to see if it is possible to blend the two. We would then discuss possible revisions to the draft at a December PFEC meeting. No opposition to the approach was expressed. Member Stroud asked that we then go back to addressing specific written comments on the draft statement to date prior to concluding discussion of this item.

Chairman Ferrier concurred and directed the review of the Board's and public comments to date. Discussion centered on whether or not to include a list of professions in the statement; whether or not the list of tasks that do not constitute the practice of forestry shown in the draft statement was appropriate; and whether or not the WHR System should be utilized to the exclusion of others.

Considerable discussion followed on the fundamental issue of what constitutes the practice of forestry.

The assembly then worked on developing a list of those tasks that do constitute the practice of forestry for possible inclusion in the draft statement. This led to discussion of the differences between 100% inventory and sampling techniques commonly used in the practice of forestry.

Chairman Ferrier solicited final comments from the assembly. No further comments were made. EO Huff was directed to prepare a revised draft statement for circulation to interested parties in advance of the next PFEC meeting for comparison with the previous version. Chairman Ferrier asked others to forward revisions or complete rewrites to EO Huff prior to the December meeting.

ITEM 3. REVIEW AND POSSIBLE REVISION OF BOARD POLICY STATEMENTS FOR PROFESSIONAL FORESTERS REGISTRATION

Chairman Ferrier introduced the topic noting that the standing policy statements adopted by the Board have expired. Reauthorization of these policies is therefore necessary. The membership agreed that reauthorization should not include a new sunset date.

The Chairman solicited comments and proposed revisions to the statements. Review of the statements and suggested revisions concluded with direction to EO Huff that revisions be circulated for a final review by the PFEC and posted on the website prior to Board consideration of reauthorization.

ITEM 7. STATUS REPORT ON RPF EXPERT EXAMINER CONTRACTS

EO Huff reported that the contract for the October 6, 2006 Examination had been approved for payment to Dr. Carlton Yee, RPF Expert Examiner.

The bid opening for a contract to include preparation of the next five examination offerings has been concluded. Awarding of the contract is likely to occur in the immediate future.

ITEM 4. PRESENTATION OF RMAC REQUEST FOR INFORMATION REGARDING ADMINISTRATION OF CRM SPECIALTY CERTIFICATE PROGRAM

EO Huff introduced the topic explaining that RMAC had asked him to explain how the administration of the CRM Examination was carried out. Specific questions included whether or not the Examination could be constructed and graded by the same process used for the RPF Examination.

Member Stroud continued with a brief history of the evolution of the CRM Specialty Program and an explanation of how the Examination process currently functions. Member Stroud then responded to questions from the other PFEC Members and the public.

It is anticipated that discussion of the CRM Examination will again be on the agenda for the next meeting.

ITEM 5. CONSIDERATION OF PROPOSED PFEC MEETING DATES FOR 2006-2007

Chairman Ferrier introduced the topic. Discussion of possible dates continued with the Members agreeing to meet on the following dates:

December 13, 2006; March 1, 2007; June 14, 2007; August 23, 2007; December 13, 2007.

The Chairman recognized that there may be a need to schedule additional meetings as issues arise.

NEW AND UNFINISHED BUSINESS (DEFENSIBLE SPACE INSPECTOR SPECIALTY CERTIFICATE)

Chairman Ferrier asked if there was any new or unfinished business to discuss. Roy Richards, Jr. responded with a question as to how many open disciplinary cases were currently before the Committee.

EO Huff responded that there are currently two open cases (involving three RPFs) with one additional case involving Board action against an RPF for violation of the Board's disciplinary order.

ADJOURNMENT

10-06-02 Member Flynn moved to adjourn the Open Session and van Emmerik seconded the motion. The motion carried 5-0.